

REMARKS

By this amendment, Claims 1, 8, and 16 have been amended. In view of the amendments and remarks, the applicant respectfully asserts that the objections and rejections to the remaining claims are now moot, and that the pending claims are in condition for allowance.

Claim Rejections – 35 U.S.C. §103(a)

In the Office Action, Claims 1-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,907,681, to Bates et al., (“*Bates*”) in view of the HTML 4.0 Sourcebook, by Graham (“*Graham*”) and Patent No. 6,738,804, to Lo, (“*Lo*”). Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over the above combination, in further view of U.S. Patent No. 6,499,054, to Hesselink et al. (“*Hesselink*”). Claims 8-11, 13, 16-19, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of *Bates*, *Graham*, and *Lo* in further view of U.S. Patent No. 6,385,510, to Hoog et al., (“*Hoog*”). Claim 20 was also rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of *Bates*, *Graham*, *Lo*, *Hesselink*, and *Hoog*.

Independent Claim 1 is Patentable

In the Office Action, the Examiner cited the combination of *Bates*, *Graham*, and *Lo* as rendering independent Claim 1 obvious. Because the combination of *Bates*, *Graham*, and *Lo*, neither teaches nor suggests all of the claim limitations described in amended independent Claim 1, for the reasons set forth below, the Examiner has failed to establish a *prima facie* case for obviousness. Therefore, independent Claim 1 is patentable, as are the claims depending there from.

Bates is recited in the Office Action as the primary reference used in the obviousness rejections of each of the pending claims. *Bates* generally discloses a computer program product and method for refreshing an entire web page at once (see, e.g., col. 4, lines 26-31; col. 3, lines 10-16). Additionally, *Bates* teaches the use of an object in a web page that requests updates of the web page from a server. However, as noted in the Office Action by the Examiner, “*Bates* fails to show the use of a frame having zero height and zero weight, the optional use of an object

that is an HTML element, script executable by the frame without user interaction, or updating only a portion of the web page.” (Page 3, emphasis added).

To provide these claim elements the Examiner relies on *Graham* and *Lo*. *Graham* is an HTML Sourcebook that the Examiner recites as teaching that a frame may be clipped to hide layers with respect to other layers shown on a web page (citing page 412, paragraph titled “Clipping and Visibility”). However, *Graham* discloses nothing more than methods for creating an invisible layer. In fact, there is nothing in *Graham* that would teach or suggest the use of such an invisible layer in the manner it is used in amended Claim 1.

The Examiner also relies on *Lo* for disclosing a means to refresh a portion of a web page without reloading the entire web page. However, nowhere does *Lo* teach or suggest the use of invisible layers to run scripts corresponding to the reloading process without user interaction. In fact, what is disclosed by *Lo* actually teaches away from what is described in amended Claim 1 for at least two reasons. First, *Lo* teaches away from what is disclosed in amended Claim 1 in that the reloading feature described in *Lo* utilizes a second separate connection channel with a server to retrieve new data for achieving an update. (See *Lo*, col. 8, lines 10-15, and FIGS. 3 and 5). In contrast, amended Claim 1 does not establish a new connection channel to the server to complete its updating, its use of invisible layers ensures that such a connection would be unnecessary to achieve its update functionality of using invisible layers to run scripts which conduct a periodic updating of at least one object on a web page. Second, *Lo* teaches away from what is described in Claim 1 because the reloading of the portion of the webpage described in *Lo* requires user interaction to initiate the first reloading of a portion of the webpage. (See *Lo*, col. 8, lines 7-10, and FIGS. 2A-5). Unlike *Lo*, amended Claim 1 is directed to a periodic updating and does not require any initialization from a user.

According to the M.P.E.P. § 2142, “the prior art reference (or references when combined) must teach or suggest all the claim limitations” as part of a *prima facie* case of obviousness. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, (Fed. Cir., 1991). As the Examiner has noted, *Bates* does not teach or suggest the use of script executable by the invisible frame without user interaction. *Graham*

does not teach or suggest such functionality either, as *Graham* discloses nothing more than methods for creating an invisible layer. Moreover, for the reasons noted above, *Lo* also does not teach or suggest the use of script executable by the invisible frame without user interaction. Thus, there is no teaching or suggestion in *Bates*, *Graham*, or *Lo* for invisible layers that execute script without user interaction to update a portion of a web page. Therefore, Applicant respectfully asserts that the Examiner is simply using the Applicant's disclosure as a roadmap for formulating an obviousness rejection, and using convenient and conclusory statements as a basis for combining references.

In addition to the above distinctions, the amended Claim 1 now recites "wherein the at least one updateable object corresponds to an HVAC system." There is no teaching or suggestion in *Bates*, *Graham*, or *Lo*, for the monitoring of data related to an HVAC system. Moreover, as will be discussed below, neither *Hoog* nor its purported combination with *Bates*, *Graham*, or *Lo* teaches or suggests what is described in amended Claim 1 (or amended Claims 8 and 16). For the reasons stated above, the combination of *Bates*, *Graham*, and *Lo* fails to teach or suggest every claim limitation of amended Claim 1. Therefore, Applicant asserts that Claim 1 should be allowed, as well as the claims depending there from.

Independent Claims 8 and 16 are Patentable

In the Office Action, the Examiner points to the combination of *Bates*, *Graham*, *Lo*, and *Hoog* as rendering independent Claims 8 and 16 as obvious. The applicant respectfully asserts that the *Bates*, *Graham*, *Lo* and *Hoog* combination fails to teach, suggest, or motivate what is described in amended Claims 8 and 16.

According to M.P.E.P. § 2143, in order for the Examiner to establish a *prima facie* case for obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. The Federal Circuit has held that evidence of a teaching, suggestion, or motivation to combine may flow from the references themselves or from the knowledge of one of ordinary skill in the art, but may not flow from the applicant's disclosure. See *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573 (Fed.

Cir., 1996), *In re Vaeck*, 947 F.2d 488 (Fed. Cir., 1991). As indicated by the Federal Circuit, an Examiner can satisfy a burden of obviousness in light of a combination of references “only by showing some objective teaching [leading to the combination]” *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1998). Importantly, this evidence of a teaching, suggestion, or motivation to combine must be “**clear and particular.**” *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir., 1999). Broad conclusory statements regarding the teachings of multiple references, standing alone, are not “evidence.” *Id.* Therefore, combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability. That is the essence of improper hindsight reasoning. See, e.g., *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

The applicant asserts that the Office Action relies on the applicant’s disclosure as a blueprint for piecing together the prior art to defeat patentability, thereby engaging in improper hindsight reasoning. The Office Action characterizes *Hoog* as teaching “a monitoring system similar to that of *Bates*, *Graham*, and *Lo*.” (Pages 5 and 6). The applicant respectfully contends that this characterization is incorrect. *Bates*, *Graham*, and *Lo* are not monitoring systems. They are references that deal with displaying content on a web page on the Internet.

Unlike *Bates*, *Graham*, and *Lo*, the *Hoog* reference does disclose a monitoring system that alerts a central station if a component of the HVAC system begins operating outside specified thresholds. (See *Hoog*, col. 9, lines 6-10). In *Hoog*, the alerts are sent as telemeter data to a central station computer via a modem over a phone line. (See *Hoog*, col. 9, lines 10-20). Once the central station receives the alert, it can send a report to a contractor by fax. (See *Hoog*, col. 9, lines 20-30). However, nowhere in the *Hoog* reference is the Internet mentioned, nor is web, web page, browser, or any internet related activity. Thus, the applicant respectfully asserts that the Office Action’s characterization of *Hoog* teaching a monitoring system similar to that of *Bates*, *Graham*, and *Lo* is simply incorrect. Furthermore, as noted above with reference to amended Claim 1, nothing in *Bates*, *Graham* or *Lo*, teaches or suggests both an invisible layer that executes script without user interaction to update a portion of a web page. *Hoog* does not provide such web-related updating functionality to the *Bates*, *Graham* and *Lo* combination.

Applicant also respectfully asserts that the *Hoog* system does not conduct periodic updating of HVAC data or operations, rather the *Hoog* system waits for particular alert or error events to occur before sending data to a central station. (See *Hoog*, col. 3, 58-63). This functionality actually teaches away from the periodic updating capabilities of what is disclosed in amended Claims 8 and 16. For the above stated reasons, the combination of *Bates*, *Graham*, *Lo*, and *Hoog* does not teach, suggest, or motivate all the limitations that are disclosed in either amended Claims 8 or 16.

Moreover, the applicant respectfully asserts that the Examiner has not pointed to any actual evidence in the cited references that would have led one of ordinary skill in the art to combine the teachings of *Bates*, *Graham*, *Lo*, and *Hoog* in the manner suggested by the Examiner. As stated by the Federal Circuit, evidence of a motivation to combine references must be clear and particular and broad conclusory statements regarding the teachings of multiple references, standing alone, are not “evidence.” The Examiner’s statements relating to increased efficiency and the need for a communications device and a processor for operability as respective motivations to combine references rendering Claims 8 and 16 obvious are themselves conclusory in nature and do not qualify as “clear and particular” evidence of a motivation to combine. Hence, no “clear and particular” evidence has been offered by the Examiner to establish a *prima facie* case of obviousness.

The applicant respectfully asserts that none of the additional references teach the elements disclosed in amended independent Claims 8 and 16. Therefore, the applicant respectfully asserts that Claims 8 and 16 be allowed, as well as the claims depending there from.


Conclusion

The foregoing is submitted as a full and complete response to the Office Action. The applicant requests that all pending claims be allowed because, as shown above, they are patentable over the art of record. It is therefore respectfully requested that a Notice of Allowance be issued. If there are any issues that can be resolved by a telephone conference or an Examiner’s Amendment, the Examiner is invited to call the undersigned attorney at (404) 853-8214.

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It is not believed that extensions of time or fees for addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,



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I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on February 16, 2005 with sufficient postage as first-class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450



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